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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

In re CONNETICS SECURITIES  
LITIGATION.

Case No. C 07-02940 SI

NOTICE OF MOTION AND MOTION  
FOR PRELIMINARY APPROVAL OF  
SETTLEMENT; MEMORANDUM OF  
POINTS AND AUTHORITIES IN  
SUPPORT THEREOF

DATE: July 17, 2009  
TIME: 9:00 a.m.  
COURTROOM: 10  
JUDGE: Hon. Susan Illston

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**NOTICE OF MOTION AND MOTION**

PLEASE TAKE NOTICE that pursuant to the Court's Order dated July 7, 2009 (Dkt. No. 189), on July 17, 2009, at 9:00 a.m., or as soon thereafter as counsel may be heard, in the Courtroom of the Honorable Susan Illston, located at the United States District Court, 450 Golden Gate Avenue, San Francisco, California, Lead Plaintiff Teachers' Retirement System of Oklahoma will move this Court for entry of the [Proposed] Order Preliminarily Approving Settlement And Providing For Notice ("Notice Order"), attached hereto as Exhibit 1. The proposed Notice Order will, *inter alia*: (i) grant preliminary approval of the proposed class action settlement on the terms set forth in the Stipulation And Agreement Of Settlement dated as of July 10, 2009; and (ii) approve the form and manner of giving notice of the proposed Settlement to the Class.

**MEMORANDUM OF POINTS AND AUTHORITIES**

Lead Plaintiff Teachers' Retirement System of Oklahoma (Lead Plaintiff" or "Oklahoma Teachers") respectfully moves this Court for entry of the [Proposed] Order Preliminarily Approving Settlement And Providing For Notice ("Notice Order"), attached hereto as Exhibit 1. The proposed Notice Order will, *inter alia*: (i) grant preliminary approval of the proposed class action settlement on the terms set forth in the Stipulation And Agreement Of Settlement dated as of July 10, 2009 (the "Stipulation" or "Settlement");<sup>1</sup> and (ii) approve the form and manner of giving notice of the proposed Settlement to the Class.

**I. INTRODUCTION**

The proposed Settlement provides for the payment of \$12.75 million in cash (the "Settlement Fund") plus interest for the benefit of the Class, in exchange for the dismissal of the claims against Connetics Corporation ("Connetics" or the "Company"<sup>2</sup>); the Individual Defendants<sup>3</sup>; and the Dismissed Defendants.<sup>4</sup>

The Settlement was reached only after extensive litigation and negotiations overseen by the Mediator, the Honorable Daniel Weinstein (Ret.). The proposed Settlement is a substantial result for the Class, in light of the risks Lead Plaintiff faced in establishing Defendants' liability and establishing the full amount of damages at summary judgment or trial. In addition, litigating this complex securities fraud class action to completion would result in significant expense and delay.

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<sup>1</sup> All capitalized terms that are not defined herein are defined in the Stipulation which is submitted herewith and attached as Exhibit 2.

<sup>2</sup> Connetics has been acquired twice since the case began, first by Stiefel Laboratories, Inc. in December 2006, and later by GlaxoSmithKline in April 2009.

<sup>3</sup> "Individual Defendants" includes Thomas G. Wiggans ("Wiggans"), Gregory Vontz ("Vontz"), John Higgins ("Higgins") and Lincoln Krochmal ("Krochmal"). The Individual Defendants and Connetics are collectively referred to herein as "Defendants." The "Settling Parties" include (i) Defendants and (ii) Lead Plaintiff on behalf of itself and the Class Members.

<sup>4</sup> "Dismissed Defendants" includes Alexander J. Yaroshinsky ("Yaroshinsky") and Victor E. Zak ("Zak"). The claims against Yaroshinsky and Zak were dismissed pursuant to this Court's Order dated February 21, 2009 (Dkt. No. 150).

1       Lead Plaintiff and its counsel—based upon their evaluation of the facts and applicable law,  
2 and their recognition of the substantial risk and expense of continued litigation—submit that the  
3 proposed Settlement is in the best interests of the Class, providing a meaningful recovery for the  
4 Class now. Accordingly, Lead Plaintiff respectfully moves for preliminary approval of the  
5 Settlement.

6 **II. STATEMENT OF FACTS**

7 **A. Summary Of The Case**

8       This is a securities fraud class action on behalf of a certified Class against Connetics and  
9 certain of its officers alleging that Defendants misled investors regarding the business results and  
10 prospects of Connetics during the Class Period, including (1) concealing and misrepresenting the  
11 safety and FDA approvability of Connetics' product, an acne medication called Velac Gel; and  
12 (2) engaging in improper "channel-stuffing" and understating Connetics' reserves. Ultimately,  
13 Connetics restated its financial results. The operative complaint, the Second Amended  
14 Complaint (the "Complaint"), alleges that these false and misleading statements inflated the price  
15 of Connetics' securities during the Class Period. It further alleges that, when the truth was  
16 revealed in a series of disclosures, investors who purchased Connetics securities during the Class  
17 Period suffered damages. The Complaint alleges claims under §§ 10(b) and 20(a) of the  
18 Securities Exchange Act of 1934 (the "Exchange Act").

19 **B. History Of The Litigation**

20       Beginning on or about October 31, 2006, various investors filed class actions against  
21 Connetics, Wiggans, Vontz and Yaroshinsky in the Southern District of New York, docket  
22 numbers 06-11496 and 06-12875. By Order dated December 14, 2006, the Southern District of  
23 New York consolidated the two actions and appointed the Teachers' Retirement System of  
24 Oklahoma as the Lead Plaintiff.

25       On February 14, 2007, Lead Plaintiff filed a consolidated class action complaint against  
26 the Company, certain officers and directors, Victor Zak, certain underwriters, and Ernst &  
27 Young LLP. The consolidated complaint asserted claims under §§ 10(b), 20(a) and 20A of the  
28 Exchange Act, and §§ 11 and 15 of the Securities Act of 1933 ("Securities Act").

1 On March 5, 2007, Defendants moved to transfer the case to the Northern District of  
2 California. The motion was granted by Order filed May 23, 2007, and the consolidated case was  
3 therefore transferred to this Court where it was docketed as case number 07-02940.

4 On June 28, 2007, Lead Plaintiff filed an amended consolidated complaint (Dkt. No. 12)  
5 against the Company, certain officers and directors, and Victor Zak. The amended consolidated  
6 complaint asserted claims under §§ 10(b), 20(a) and 20A of the Exchange Act.

7 On August 13, 2007, Zak filed an Answer to the amended consolidated complaint (Dkt.  
8 No. 20), and the remaining Defendants filed motions to dismiss, motions to strike, and motions  
9 for judicial notice (Dkt. Nos. 22, 24, 27, 29, 31, 38, 41). Lead Plaintiff filed oppositions to  
10 Defendants' motions (Dkt. Nos. 42, 43, 44, 45, 47, 74, 79), and Defendants filed reply briefs  
11 (Dkt. Nos. 49, 50, 52, 54, 56, 66).

12 Following a hearing on October 19, 2007, the Court granted in part and denied in part  
13 Defendants' motions, and granted Lead Plaintiff leave to amend the complaint (Dkt. No. 83).

14 On March 14, 2008, Lead Plaintiff filed the Second Amended Complaint, alleging claims  
15 against the defendants named therein under §§ 10(b), 20(a), and 20A of the Exchange Act.

16 Following briefing on Defendants' second round of motions to dismiss, strike, and for  
17 judicial notice (Dkt. Nos. 93, 94, 96, 98, 101, 103, 106, 107, 110, 111, 112, 115, 116, 118, 119,  
18 120, 121), by Order dated August 14, 2008 (Dkt. No. 126), the Court granted in part and denied  
19 in part Defendants' motions to dismiss and denied Defendants' motions to strike. The Court  
20 dismissed the claims against Yaroshinsky and Zak, and granted leave to amend.

21 Lead Plaintiff thereafter provided notice (Dkt. No. 129) that it would, without amending  
22 its complaint, proceed under the Second Amended Complaint in accordance with the Court's  
23 August 14, 2008 Order. Defendants filed an Answer to the Complaint on October 6, 2008 (Dkt.  
24 No. 132).

25 During the course of the Litigation, Lead Plaintiff and Defendants conducted discovery,  
26 including but not limited to Lead Plaintiff's review and analysis of a substantial volume of  
27 documents produced by Defendants and third-parties.



1 On November 14, 2008, counsel for the parties appeared before Judge Illston for an  
2 Initial Case Management Conference, at which time the Court set a briefing schedule for Lead  
3 Plaintiffs motion for class certification (Dkt. No. 141).

4 On March 2, 2009, Lead Plaintiff and Defendants voluntarily participated in a mediation  
5 session with the Honorable Daniel Weinstein (Ret.) in San Francisco, California. Counsel for  
6 the Settling Parties, as well as Assistant Attorney General, David Kinney, participated in person  
7 at the mediation. During the mediation, the parties reached an impasse and no settlement was  
8 reached. Following the mediation, Judge Weinstein remained in communication with the parties  
9 about the case and prospects for a potential settlement.

10 On March 16, 2009, Lead Plaintiff filed its motion for class certification (Dkt. No. 155).  
11 Defendants filed an opposition brief on April 6, 2009 (Dkt. Nos. 161, 168), and Lead Plaintiff  
12 filed its reply brief on April 27, 2009 (Dkt. No. 176). On May 11, 2009, the Court heard oral  
13 argument on Lead Plaintiff's motion, and also held a Case Management Conference (Dkt. No.  
14 184).

15 By Order dated May 12, 2009 (Dkt. No. 183), the Court granted Lead Plaintiff's motion to  
16 certify the Class and to appoint Lead Plaintiff as the class representative pursuant to the Fed. R.  
17 Civ. P. 23(a), certifying a Class of all persons and entities who purchased or otherwise acquired  
18 the publicly traded securities of Connetics from January 27, 2004, through July 9, 2006 (the  
19 'Class Period'), and who suffered damages as a result.<sup>5</sup>

20 By Order dated May 15, 2009 (Dkt. No. 185), the Court set certain deadlines for fact  
21 discovery completion, identification of experts, expert discovery completion, and for distributing  
22

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23 <sup>5</sup> Excluded from the Class are: (i) the Defendants and Dismissed Defendants; (ii) members of  
24 the family of each Individual Defendant or Dismissed Defendant; (iii) any person who was an  
25 officer or director of Connetics during the Class Period; (iv) any person who is or was named as  
26 a defendant in any U.S. Government or state criminal or civil proceeding relating to Connetics;  
27 (v) any firm, trust, corporation, officer, or other entity in which any Defendant or Dismissed  
28 Defendant has a controlling interest; and (vi) the legal representatives, agents, affiliates, heirs,  
successors-in-interest or assigns of any such excluded party. Also excluded from the Class are  
any persons who exclude themselves by filing a request for exclusion in accordance with the  
requirements set forth in the Notice.

1 notice to the Class. The Court also set dates for further Case Management Conferences, for the  
2 Pretrial Conference, and a June 28, 2010 trial date.

3 Following the extensive litigation summarized above, on May 29, 2009, the Settling  
4 Parties reached an agreement in principle regarding a proposed settlement of the Consolidated  
5 Action. The proposed Settlement is contained in the Stipulation, attached hereto as Exhibit 2.

6 **C. Reasons For The Settlement**

7 Lead Plaintiff has entered into this Settlement with a thorough understanding of the  
8 strengths and weaknesses of the claims. This understanding is based on Lead Counsel's  
9 prosecution of this Litigation which has included, *inter alia*: (i) drafting of a detailed amended  
10 consolidated complaint and the Second Amended Complaint after review and analysis of the  
11 Company's SEC filings, annual reports, and other public statements, and interviews with  
12 confidential witnesses; (ii) extensive briefing on Defendants' motions to dismiss; (iii) review and  
13 analysis of documents produced by Defendants and third-parties; (iv) consultations with experts;  
14 (v) review and analyses of potential sources of recovery; (vi) drafting of a mediation statement  
15 and preparing for and participating in mediation; and (vii) briefing a motion for class  
16 certification. Lead Counsel has conducted an investigation relating to the claims and the  
17 underlying events and transactions alleged in the Complaint. Lead Counsel has analyzed the  
18 evidence adduced during its investigation and has researched the applicable law with respect to  
19 the claims of Lead Plaintiff and the Class against the Defendants and the potential defenses  
20 thereto. Lead Plaintiff and Lead Counsel have taken into account the Court's decision dismissing  
21 plaintiffs' claims in part, and the possibility that the remaining claims might have been later  
22 dismissed at the summary judgment stage or resulted in lesser or no damages at trial.

23 In sum, Lead Plaintiff and Lead Counsel have concluded that the Settlement is in the best  
24 interests of Lead Plaintiff and the Class and that the Settlement is fair, reasonable, and adequate.  
25 This conclusion is based on, among other things: (a) the substantial benefits that Lead Plaintiff  
26 and the members of the Class will receive from resolution of the Litigation against the  
27 Defendants; (b) the attendant risks of litigation, including the potential sources of recovery; (c)  
28 the desirability of permitting the Settlement to be consummated as provided by the terms of this

Stipulation; (d) the substantial expense and time necessary to continue prosecuting this Litigation through dispositive motions, trial, appeals or any other potential proceedings; (e) the significant uncertainties in predicting the outcome of this complex litigation; and (f) the likelihood that the Class would recover less than the amount provided by the Settlement, or nothing at all.

### III. ARGUMENT

#### A. The Standards For Preliminary Approval Of A Class Action Settlement

Federal Rule of Civil Procedure 23(e) requires judicial approval for any compromise of claims brought on a class basis. “The Ninth Circuit has declared that a strong judicial policy favors settlement of class actions.” *Clark v. Michaels Stores, Inc.*, 2007 WL 4058758, at \*1 (S.D. Cal. Nov. 14, 2007) (citations omitted). The issue of whether a proposed settlement should be approved is within the sound discretion of the district court, which should be exercised in the context of public policy strongly favoring the pretrial settlement of class action lawsuits. *See Class Plaintiffs v. Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992); *Officers for Justice v. Civil Serv. Comm’n*, 688 F.2d 615, 625 (9th Cir. 1982). “[T]here is an overriding public interest in settling and quieting litigation,” and this is “particularly true in class action suits.” *Van Bronkhorst v. Safeco Corp.*, 529 F.2d 943, 950 (9th Cir. 1976).

“Parties represented by competent counsel are better positioned than courts to produce a settlement that reflects each party’s expected outcome in litigation” and, therefore, absent conflict of interests, fraud, collusion or overreaching among the negotiating parties, “strong judicial policy” favors approval of the negotiated settlement. *In re Pacific Enter. Sec. Litig.*, 47 F.3d 373, 378 (9th Cir. 1995). The Ninth Circuit has held that “the court’s intrusion upon what is otherwise a private consensual agreement negotiated between the parties to a lawsuit must be limited to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned.” *Officers for Justice*, 688 F.2d at 625.

In considering whether to grant preliminary approval of a class action settlement, courts make a preliminary evaluation of the fairness of the settlement prior to issuing notice to the class,

and to holding a final approval hearing. The general standard by which courts are guided when deciding whether to grant preliminary approval of a class action settlement is whether the proposed settlement falls within the range of what could be found “fair, adequate and reasonable,” so that notice may be given to the proposed class and a hearing for final approval can be scheduled. *Class Plaintiffs*, 955 F.2d at 1276; *Officers for Justice*, 688 F.2d at 625.

At this point, the Court need not answer the ultimate question: whether the Settlement is fair, reasonable and adequate. In later making that ultimate determination, the Court will be asked to review and balance the following factors, among others: the strength of plaintiffs’ case; the risk, expense, complexity, and likely duration of further litigation; the amount offered in settlement; and the stage of the proceedings; the experience and views of counsel. *See, e.g., Linney v. Cellular Alaska P’ship*, 151 F.3d 1234, 1242 (9th Cir. 1998) (citing *Torrissi v. Tucson Elec. Power Co.*, 8 F.3d 1370, 1375 (9th Cir. 1993)); accord *Biancur v. Hickey*, 1997 WL 767521, at \*2 (N.D. Cal. Nov. 19, 1997). Different factors may predominate in different factual contexts. *See Torrissi*, 8 F.3d at 1376.

Lead Plaintiff here requests only that the Court now take the first step in the settlement process, which is to grant preliminary approval of the proposed Settlement. The proposed Settlement, which provides the sum of \$12.75 million in cash plus interest for distribution to eligible Class Members after deduction of Court-awarded fees and expenses, is unquestionably beneficial to the Class. Given the complexities of this case, and the continued risks if the parties were to proceed, the Settlement represents a reasonable resolution, and eliminates the risk that the Class might later recovery less or nothing at all.

**B. This Court Should Grant Preliminary Approval Of The Proposed Settlement**

As summarized below, and as will be further detailed subsequently in Lead Plaintiffs’ motion for final approval of the Settlement, a preview of factors considered by courts in granting ultimate final approval of class action settlements demonstrates that the Settlement is well within the range of approval.

**1. The Settlement Was Vigorously Negotiated And Is Supported By Experienced Counsel**

Courts recognize that the opinion of experienced counsel supporting the settlement after vigorous arm's-length negotiations is entitled to considerable weight. *See, e.g., Bellows v. NCO Financial Systems, Inc.*, 2008 WL 5458986, at \*7 (S.D. Cal. Dec. 10, 2008) (presumption of fairness arises when proposed settlement reached after meaningful discovery and arm's length negotiation between capable counsel); *Linney v. Alaska Cellular P'ship*, 1997 WL 450064, at \*16 (N.D. Cal. July 18, 1997) ('The involvement of experienced class action counsel and the fact that the settlement agreement was reached in arm's length negotiations, after relevant discovery had taken place create a presumption that the agreement is fair'), *aff'd*, 151 F.3d 1234 (9th Cir. 1998); *Ellis v. Naval Air Rework Facility*, 87 F.R.D. 15, 18 (N.D. Cal. 1980) ('the fact that experienced counsel involved in the case approved the settlement after hard-fought negotiations is entitled to considerable weight'), *aff'd*, 661 F.2d 939 (9th Cir. 1981).

Here, the parties have been actively litigating this consolidated action for over two years since its commencement in October 2006. Lead Counsel conducted a sophisticated and extensive investigation into the claims asserted in the complaints, including, but not limited to, multiple interviews with confidential witnesses, review and analysis of documents produced by Defendants and third parties, and consultation with experts. Thus, by the time the Settlement was reached, Lead Counsel had a solid understanding of the strengths and weaknesses of the claims, both factually and legally, and was able to engage in a rigorous negotiation process with Defendants.

Additionally, throughout the Litigation and settlement negotiations, both Lead Plaintiff and Defendants have been represented by experienced counsel from prominent law firms. The Settling Parties, including Assistant Attorney General, David Kinney, participated in a mediation session conducted under the direction of the Honorable Daniel Weinstein (Ret.), a retired federal judge and well-regarded mediator with extensive experience in the mediation of complex actions such as this case. After reaching an impasse at the mediation, counsel for the Settling Parties continued with discovery, and vigorously represented their respective clients during the class certification process, related oral argument and the further case management conference. Simultaneously, the Settling Parties continued communications with the mediator regarding the

case and potential settlement. The settlement amount is consistent with the Mediator's recommendation based on his familiarity with the facts, claims, defenses and issues. The presumptive fairness of the Settlement is underscored by the fact that Lead Plaintiff and Defendants reached a compromise only after these extensive and informed negotiations before Judge Weinstein. *See Glass v. UBS Fin. Servs., Inc.*, 2007 WL 221862, at \*5 (N.D. Cal. Jan. 26, 2007) ('The settlement was negotiated and approved by experienced counsel on both sides of the litigation, with the assistance of a well-respected mediator with substantial experience . . . [and] this factor supports approval of the settlement.').

There is, therefore, no doubt that the Settlement was reached without collusion and after good-faith bargaining between the Settling Parties, and this factor supports a finding that the Settlement is fair, adequate and reasonable, at a minimum, for purposes of preliminary approval.

**2. The Substantial Benefit Obtained For The Class,  
Especially In Light Of Serious Risks Of Lesser Or  
No Recovery, Supports Approval Of The Settlement**

As set forth above, the Settlement provides for the recovery of \$12.75 million in cash plus interest to be allocated among Class Members after deduction for Court-approved fees and expenses. If the Litigation had continued, Lead Plaintiff faced substantial risks, including establishing Defendants' liability and the Class' full amount of damages at summary judgment or trial. For example, Lead Plaintiff and Lead Counsel took into account the Court's decision dismissing Lead Plaintiff's claims in part, and the possibility that the remaining claims asserted in the Complaint might have been dismissed in response to Defendants' anticipated motions for summary judgment. They further considered that certain issues would have been decided by a jury in the event of a trial of the Litigation, including whether Defendants acted with an intent to mislead investors, whether the alleged misrepresentations or omissions were material to investors, whether all of Class Members' losses were caused by the alleged misrepresentations or omissions, and the amount of damages. In addition, litigating this complex securities fraud class action to completion would result in significant expense and delay. This recovery, obtained in the face of the real risk of lesser or no recovery, is particularly supportive of approval of the Settlement.

1                   **3.     The Stage Of The Proceedings**  
2                   **Supports Approval Of The Settlement**

3           The stage of proceedings and discovery completed are additional factors supporting the  
4           Settlement. Here, Lead Counsel advanced the case through, among other things, the  
5           investigation and drafting of the consolidated complaints and the operative Complaint, opposing  
6           Defendants' motions to dismiss and related motions, consulting with experts, certifying the Class,  
7           and preparing for and participating in mediation overseen by Judge Weinstein. Importantly,  
8           Lead Counsel conducted a thorough investigation of the facts and claims of this case, including:  
9           (a) review and analysis of a substantial volume of documents produced by Defendants and third-  
10          parties; (b) review and analysis of the Company's SEC filings and annual reports, sworn  
11          declarations in *SEC v. Yaroshinsky*, extensive literature concerning relevant mouse studies, and  
12          other public statements; (c) interviews with witnesses; (d) consultation with experts; and (e)  
13          review and analyses of potential sources of recovery. There can be no question that at the time  
14          the Settlement was reached Lead Plaintiff had a clear view of the strengths and weaknesses of  
15          the claims.

16                   **C.     The Form And Manner Of The**  
17                   **Proposed Notice To The Class Is Adequate**

18          Notice of a proposed settlement to class members must be given in the most practicable  
19          manner under the circumstances. Fed. R. Civ. P. 23(c)(2)(B); *In re Wireless Facilities, Inc. Sec.*  
20          *Litig.*, 253 F.R.D. 630, 636 (S.D. Cal. 2008). In addition, pursuant to the Private Securities  
21          Litigation Reform Act of 1995 ("PSLRA"), "every settlement notice must include a statement  
22          explaining a plaintiff's recovery." *Id.* at 636 (citing *In re Veritas Software Corp. Sec. Litig.*, 496  
23          F.3d 962, 969 (9th Cir. 2007)). This statement should include "the average amount of damages  
24          per share that would be recoverable if the plaintiff prevailed on each claim alleged." *Id.* at 636-37  
25          (quoting 15 U.S.C. § 78u-4(a)(7)(B)).

26          The proposed Notice to the Class in this Litigation more than satisfies this standard. The  
27          proposed Notice informs the Class of: (a) the amount of the Settlement—\$12.75 million—to be  
28          distributed to the Class, less Court-approved fees and expenses; (b) the average recovery per  
29          share; (c) attorneys' fees and expenses sought; (d) the name, telephone number, and address of



1 representatives of Lead Counsel who will be reasonably available to answer questions from  
2 Class Members concerning matters contained in the Notice; (e) the right of Class Members to  
3 object to the Settlement or seek exclusion from the Class; (f) the reasons why the Settling Parties  
4 propose the Settlement; and (g) the dates and deadlines for certain settlement-related events. 15  
5 U.S.C. § 78u-4(a)(7).

6 Here, the proposed Notice is adequate and complies with due process, Rule 23, and the  
7 PSLRA. *See In re Immune Response Sec. Litig.*, 497 F. Supp. 2d 1166, 1170 (S.D. Cal. 2007)  
8 (notice providing description of the nature of the action and issues involved in the litigation,  
9 concise and clear statement of definition of the class that was certified, procedure for requesting  
10 appearance at the settlement hearing, procedure for exclusion from the class, binding effect of  
11 the class judgment and deadline for filing objections approved).

12 If the Court grants preliminary approval of the Settlement and the proposed form of  
13 Notice, the Notice will be mailed to all Class Members who appear on the transfer records of  
14 Connetics as having transferred to their names Connetics securities during the Class Period.  
15 Further, Lead Counsel, through the Claims Administrator, will use reasonable efforts to give  
16 notice to nominee holders such as brokerage firms and other persons or entities who purchased  
17 and/or acquired Connetics securities during the Class Period as record owners but not as  
18 beneficial owners. The Summary Notice will also be published once in the national edition of  
19 *The Investor's Business Daily*. In addition, the Notice and Claim Form will be placed on the  
20 Claims Administrator's website and a website specifically dedicated to the Settlement.

21 Courts routinely find that comparable notice programs meet the requirements of due  
22 process, Rule 23, and the PSLRA. *See Rodriguez v. West Publishing Corp.*, 563 F.3d 948, 962  
23 (9th Cir. 2009) ('Notice is satisfactory if it 'generally describes the terms of the settlement in  
24 sufficient detail to alert those with adverse viewpoints to investigate and come forward and be  
25 heard') (citations omitted); *In re Portal Software, Inc. Sec. Litig.*, 2007 WL 1991529, at \*7 (N.D.  
26 Cal. June 30, 2007) (dissemination of notice to all reasonably identifiable class members with  
27 summary notice published in *The Investor Business Daily* approved as best practical) (citing  
28



Manual for Complex Litigation (4th ed. 2004) §21.311) ("Publication in magazines, newspapers, or trade journals may be necessary if class members are not identifiable after reasonable effort").

#### IV. PROPOSED SCHEDULE OF EVENTS

In connection with preliminary approval of the Settlement, the Court must set a final approval hearing date, dates for mailing of the Notice and Claim Form, and deadlines for submitting claims, and for opting out of or objecting to the Settlement. The Settling Parties propose the following schedule:

<u>Event</u>	<u>Timeframe for Compliance</u>	<u>Deadline if Preliminary Approval is granted on July 17, 2009, and Final Approval Hearing set for October 9, 2009</u>
Deadline for mailing the Notice and Claim Form to Class Members ("Notice Date")	No later than ten (10) business days after entry of the Preliminary Approval Order	July 31, 2009
Deadline for publishing Summary Notice	No later than ten (10) business days after mailing of the Notice	August 14, 2009
Deadline for submitting exclusion requests or objections	No later than twenty-one (21) calendar days prior to the Final Approval Hearing	September 18, 2009
Filing of papers in support of final approval of Settlement, Plan of Allocation and Lead Counsel's application for attorneys' fees and expenses	No later than seven (7) business days prior to the Final Approval Hearing	September 30, 2009
Final Approval Hearing	[To be set by the Court]	[Proposed for October 9, 2009]
Deadline for submitting Claim Forms	No later than 120 calendar days after the Notice Date	November 30, 2009

#### V. CONCLUSION

Based on the foregoing, Lead Plaintiff respectfully requests that the Court grant preliminary approval of the Settlement.

Dated: July 10, 2009

Respectfully submitted,

BERNSTEIN LITOWITZ BERGER  
& GROSSMANN LLP

/s/ David R. Stickney

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*Attorneys for Lead Plaintiff Teachers' Retirement  
System of Oklahoma and Lead Counsel to the Class*

**CERTIFICATE OF SERVICE**

I, Kristina L. Sousek, do hereby certify that on this 10th day of July, 2009, true and correct copies of the foregoing:

**NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF  
SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES IN  
SUPPORT THEREOF**

was filed electronically. Those attorneys who are registered with the Electronic Case Filing (ECF) System may access this filing through the Court's system, and notice of this filing will be sent to the parties by operation of the Court's ECF System. Attorneys not registered with the Court's ECF system will be duly and properly served via Federal Express or U.S. Mail (as indicated on the attached Service List), in accordance with the Federal Rules of Civil Procedure and the Court's Local Rules.

/s/ Kristina L. Sousek

KRISTINA L. SOUSEK

**Service List**

In re CONNETICS SECURITIES LITIGATION

Case No.: 07-02940

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***Via ECF***

#26071/v7